Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AKIHIRO NAGATA, TOSHIAKI ARAGANE,
TAKASHI HAMADA, and YOSHIKI MATSUURA

Appeal No. 2001-0368
Application No. 09/008,675

ON BRIEF

Before CAROFF, WARREN, and LIEBERMAN, Administrative Patent Judges.

CAROFF, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Pursuant to 37 CFR § 1.197(b), appellants request rehearing of the panel decision dated Aug. 22, 2002, wherein the panel affirmed the examiner's decision rejecting claims 1-10, 13-17 and 21-26. All the other pending claims in appellants' application, claims 11-12 and 18-20, stand allowed by the examiner.

Appellants' request for rehearing is solely directed to the rejection of claims 1, 3-6, 10, 13-14, 16-17, 21 and 24-25 under

35 U.S.C. § 102(b) as being clearly anticipated by Perkins. Appellants do not seek reconsideration of the rejections made against other claims on other grounds.

In their request for rehearing, appellants submit that our interpretation of the word "wrapping" in claim 1, based upon its dictionary definition, is somehow inconsistent with the way in which it is used in appellants' specification. We respectfully disagree.

Claims in an application are to be given their broadest reasonable interpretation consistent with the specification. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). We see no inconsistency in construing the verb "wrap" broadly as meaning "to envelop, surround or embrace." In this regard, we note that appellants' specification uses the term on page 10, lines 15-22, when referring to a specific embodiment without excluding other possible embodiments. Further, we note that original claim 14, in defining appellants' invention, does not even use the term "wrap" or "wrapping." Rather, claim 14 defines the relationship between the vapor-impervious film and the belt as one where the film is placed "against and extending around" the outwardly facing surface of the belt. Thus, it is clear that appellants' specification is open to, and consistent

with, a broader construction of the term "wrapping" than appellants would have us ascribe to it when used in the claims.

As requested by appellants, we have considered each of the claims at issue individually. Having done so, we find that appellants have made a viable argument for separate patentability only with respect to claims 13 and 21. Appellants correctly point out that the "spiral wrap" embodiment of claims 13 and 21 is not anticipated by the "airtight bag or envelope" embodiment of Perkins. Accordingly, we modify our original decision by reversing the rejection of claims 13 and 21.

With regard to claim 24, although Perkins does not explicitly call for use of a vapor-impervious film or "cocoon" composed of multiple layers, in our opinion it would have been obvious, within the context of 35 U.S.C. § 103, to employ layers of different materials to obtain the additive benefits of each, or to employ multiple layers of the same material in order to obtain a stronger or more air tight barrier. Since we now rely upon the provisions of 35 U.S.C. § 103 as to claim 24, the rejection of claim 24 should be regarded as a new ground of rejection under 35 U.S.C. § 1.196(b).

In summary, we have modified our original decision by:

(a) reversing the decision of the examiner as to claims 13, 21 and 24; and

(b) imposing a new ground of rejection as to claim 24, pursuant to the provisions of 37 CFR § 1.196(b), based upon a finding of obviousness under 35 U.S.C. § 103.

Otherwise, our original decision stands without further modification.

Accordingly, appellants' request for rehearing has been granted-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REHEARING/GRANTED-IN-PART

MARC L. CAROFF)
Administrative Patent Judge)
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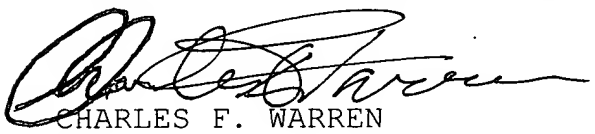
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CHARLES F. WARREN) APPEALS AND
Administrative Patent Judge) INTERFERENCES
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PAUL LIEBERMAN)
Administrative Patent Judge)

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